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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,947	11/04/2003	Ross W. Callon	IBN.5202C1	7124

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EXAMINER	
ABELSON, RONALD B	
ART UNIT	**PAPER NUMBER**
2619	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/701,947	CALLON ET AL.	
	Examiner	Art Unit	
	Ronald Abelson	2619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 September 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *38-61* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *38-61* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *11/4/03* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Ron abelson
10/9/07

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 38-49 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 38 recites "the first header portion indicating the first node as a source node and a second node in the VPN as a destination node". However, the specification only states the first header portion is associated with the source and destination nodes of the fist subnetwork ([0019, 0023]).

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or

improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 38 and 39 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 2 and 3 respectively of U.S. Patent No. 6,643,287 '287'. Although the conflicting claims are not identical, they are not patentably distinct from each other.

Regarding claim 38, '287' claim 2 teaches (a) virtual private network 'VPN' (claim 2), using a first header portion of a data packet (value derived from the first header portion, col.

10 lines 5-7), generating a value associated with the source and destination nodes (col. 10 lines 5-7);

'287' claim 2 teaches creating a second header portion for the data packet including the value associated with the source and destination nodes (col. 10 lines 5-10)

'287' claim 2 teaches using the second header portion, selecting one of a plurality of possible paths on a second network connected to the first subnetwork (col. 9 lines 65-66) for forwarding the packet (col. 10 lines 11-13).

Although '287' claim 2 teaches the steps of "using a first header portion" and "generating a value", the claim is silent on at the first node "using" and "generating", the first header portion indicating the first node as a source node and a second node as the destination node. However, it would have been obvious to one of ordinary skill in the art, to modify the system of '287' claim 2 by performing the steps at the first node / source node, since the packet is being routed from the source node. Furthermore, it would have been obvious to store in the first header portion the source node and the destination node of the packet since the packet is being routed from the source node to

the destination node. This modification would benefit the system by informing nodes along the path of the destination node packet. In addition, the destination node will be informed of the origin of the packet.

Regarding claims 39, see '287' claim 3.

5. Claims 40-49 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 6 and 10-18 respectively of U.S. Patent No. 6,643,287 '287' in view of '287' claim 2.

Although '287' claim 1 teaches the steps of "using a first header portion" and "generating a value", the claim is silent on at the first node "using" and "generating", the first header portion indicating the first node as a source node and a second node as the destination node wherein the destination node is in a VPN network. However, it would have been obvious to one of ordinary skill in the art, to modify the system of '287' claim 1 by performing the steps at the first node / source node since the packet is being routed from the source node. Furthermore, it

would have been obvious to store in the first header portion the source node and the destination node of the packet since the packet is being routed from the source node to the destination node. This modification would benefit the system by informing nodes along the path of the destination node packet. In addition, the destination node will be informed of the origin of the packet.

'287' claim 1 is silent on the first node / source node, in a virtual private network.

Patent '287' claim 2 teaches the first node in a virtual private network.

Therefore it would have been obvious to one of ordinary skill in the art, to modify the system of '287' claim 19 by installing the first subnetwork on a virtual private network, as shown by Patent '287' claim 2. Adhering to virtual private network standards can perform this modification. This modification would benefit the system since virtual private networks are prevalent in today's networking environment.

6. Claims 50 and 51 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 21 and 22 respectively of U.S. Patent No. 6,643,287 '287'. Although the conflicting claims are not identical, they are not patentably distinct from each other.

Regarding claim 50, Patent '287' claim 21 teaches a first and a second node (source node on first subnetwork, destination node on first subnetwork, col. 10 lines 52-54) in a virtual private network (VPN) (first subnetwork is a virtual private network, col. 11 lines 4-5), each node coupled to a second network (first subnetwork being connected the second subnetwork, col. 10 lines 54-55); and a data packet (col. 10 line 50).

Patent '287' claim 21 teaches generating, using a first header portion of the data packet, a value associated with the source node and the destination node (col. 10 lines 60-63), creates a second header portion for the data packet including the value generated from the first header portion (col. 10 lines 63-65), and using the second header portion selects one of a plurality of possible paths through the second network for routing the data packet to the second node / destination node,

in the VPN (col. 10 lines 65-67, destination node on first subnetwork, col. 10 lines 52-54).

Although patent '287' claim 21 is silent on the first node / source node, 'generates', it would have been obvious to one of ordinary skill in the art, to modify the system of '287' by having the first node / source node, perform the step of generating since the apparatus performs the function of transferring a packet from the source node to the destination node on the first subnetwork and the first node / source node, must know which node to transfer the packet. This modification can be performed in software. This modification would benefit the system by informing the source node which node it should transfer the packet to.

Regarding claim 51, see '287' claim 22.

7. Claims 52-61 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 25 and 29-37 respectively of U.S. Patent No. 6,643,287 '287' in view of U.S. Patent No. 6,643,287 claim 21.

Regarding claims 52-61, although patent '287' claim 19 is

silent on the first node / source node, 'generates', it would have been obvious to one of ordinary skill in the art, to modify the system of '287' by having the first node / source node, perform the step of generating since the apparatus performs the function of transferring a packet from the source node to the destination node on the first subnetwork and the first node / source node, must know which node to transfer the packet. This modification can be performed in software. This modification would benefit the system by informing the source node which node it should transfer the packet to.

Regarding claims 52-61, patent '287' claim 19 is silent on the first subnetwork is a virtual private network.

Patent '287' claim 21 teaches the first subnetwork is a virtual private network.

Therefore it would have been obvious to one of ordinary skill in the art, to modify the system of '287' claim 19 by installing the first subnetwork on a virtual private network, as shown by Patent '287' claim 21. Adhering to virtual private network standards can perform this modification. This modification would benefit the system since virtual private networks are prevalent in today's networking environment.

Response to Arguments

8. Applicant's arguments with respect to amended independent claims 38 and 50 have been considered but are moot in view of the new ground(s) of rejection. The examiner disagrees with the applicant's contention that the claims are patentably distinct from the cancelled claims (see office action above).

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronald Abelson whose telephone number is (571) 272-3165. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wing Chan can be reached on (571) 272-7439. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ronald Abelson
Examiner
Art Unit 2619

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